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No. 90-1191

In the Supreme Court

OF THE

United States

OCTOBER TERM 1990

OPERATING ENGINEERS & PARTICIPATING EMPLOYERS PRE-APPRENTICE, APPRENTICE AND JOURNEYMAN AFFIRMATIVE ACTION TRAINING FUND, AND THE OPERATING ENGINEERS JOINT APPRENTICESHIP COMMITTEE FOR NORTHERN CALIFORNIA,
Petitioners,

VS.

WEISS BROS. CONSTRUCTION CO. dba WEISSCAL, et al.,
Respondents.

MOTION TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE LOS ANGELES, ORANGE, SAN BERNARDINO-RIVERSIDE, VENTURA AND SANTA CLARA COUNTIES ELECTRICAL JOINT APPRENTICESHIP AND EDUCATIONAL TRAINING COMMITTEES, AND THE SHEET METAL WORKERS' LOCALS 104 AND 162 JOINT APPRENTICESHIP TRAINING COMMITTEES IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

KATHRYN A. SURE
WYLIE, MCBRIDE, JESINGER, SURE & PLATTEN
101 Park Center Plaza
Suite 1001
San Jose, CA 95113
(408) 297-9172

RONALD W. NOVOTNY
COUNSEL OF RECORD
HILL, FARRER & BURRILL
445 S. Figueroa Street
35th Floor
Union Bank Square
Los Angeles, CA 90071
(213)620-0460
Attorneys for Amici Curiae

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Petitioners,

VS.

WEISS BROS. CONSTRUCTION CO. dba WEISSCAL, et al.,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

COME NOW the Electrical Joint Apprenticeship and Educational Training Committees for Los Angeles, Orange, San Bernardino, Riverside, Ventura and Santa Clara Counties, and the Sheet Metal Workers' Locals 104 and 162 Joint Apprenticeship and Training Committees, Amici Curiae herein, and, pursuant to Rule 37.2 of the Rules of this Court, hereby respectfully request that this Court grant leave to file the accompanying Brief in support of the petition for writ of certiorari to the Court of Appeal of the State of California. The Petitioners, Operat-

ing Engineers & Participating Employers Pre-Apprentice, Apprentice and Journeyman Affirmative Action Training Fund, and The Operating Engineers Joint Apprenticeship Committee For Northern California, have consented to the filing of this Brief, whereas Respondents Weiss Bros. Construction Co. d/b/a Weisscal, David Weiss, and Allen Weiss have not. The bases for this motion are as follows:

1. Amici Curiae operate apprenticeship training programs in the electrical and sheet metal industries in the greater Northern and Southern California areas. According to the state Court of Appeal's decision, such training programs constitute "employee welfare benefit plans" within the meaning of § 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1002(1).

2. Amici Curiae provide training to their apprentices in the electrical and sheet metal industries by means of certain "standards" which they have adopted under state law and regulation and which have been approved by the State of California. In its decision in this proceeding, the California Court of Appeal held that such apprenticeship training standards constitute "employee welfare benefit plans" within the meaning of ERISA and that an apprenticeship trust fund or joint apprenticeship committee's attempts to enforce them by means of a civil action in the state courts are barred by the ERISA preemption doctrine. See *Operating Engineers & Participating Employers Pre-Apprentice, Apprentice and Journeyman Affirmative Action Training Fund, et al. vs. Weiss Bros. Construction Co. d/b/a Weisscal, et al.*, 221 Cal.App.3d 867, 877-79 (1990); Petition for Writ of Certiorari, Appendix B-11 to B-14. Amici Curiae are vitally interested in the potential impact of the Court of Appeal's decision on their rights to

maintain and enforce training standards which they have adopted and which are necessary to ensure the health, safety, welfare and proper instruction of the apprentices training in their programs.

3. Amici Curiae are also concerned with the Court of Appeal's overly narrow reading of § 514(d) of ERISA, 29 U.S.C. § 1144(d), particularly insofar as it failed to take into account the federal government's historical practice of abdicating the enforcement of apprenticeship standards to the states. Because it is the states and not the federal government which essentially regulate apprenticeship training in this country, the Court of Appeal's decision would impair the implementation of the United States Fitzgerald Act, 29 U.S.C. § 50, which formally recognizes that policy and depends on the state governments and their administrative agencies for its enforcement.

Accordingly, these Amici Curiae respectfully request that leave be granted as requested and that their accompanying Brief be filed and considered by the Court.

Respectfully submitted,

KATHRYN A. SURE
WYLIE, MCBRIDE,
JESINGER, SURE
& PLATTEN
101 Park Center Plaza
Suite 1001
San Jose, CA 95113
(408) 297-9172

RONALD W. NOVOTNY
COUNSEL OF RECORD
HILL, FARRER & BURRILL
445 S. Figueroa Street
35th Floor
Union Bank Square
Los Angeles, CA 90071
(213)620-0460

Attorneys for Amici Curiae

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INTEREST OF AMICI CURIAE

Amici Curiae are not unmindful of the fact that it is common practice for litigants before this Court to sound alarums in hope of persuading the Court that their cause, among all others, are worthy of the Court's attention. Nevertheless, this Court should not remain unsuspecting of the serious consequences which logically follow from the ruling of the California Court of Appeal: that the State of California's inherent right to enforce training standards necessary for the safe and proper training of apprentices in this state, which the State has enforced over the last fifty years, is now threatened by a cramped and misinformed reading of the ERISA preemption doctrine which ultimately undermines Congressional intent. Indeed, as is obvious from a review of the Court of Appeal's decision, its opinion threatens to eviscerate not only the State of California's right to enact and enforce health and safety standards for the training of apprentices, but those of all of the states and their administrative agencies generally.

Amicus Curiae Los Angeles County Electrical Joint Apprenticeship and Educational Training Committee is an apprenticeship training committee jointly sponsored by the Los Angeles County Chapter of the National Electrical Contractors Association (N.E.C.A.) and the International Brotherhood of Electrical Workers (I.B.E.W.) Local 11. It is one of the largest electrical apprenticeship training programs in the United States, and has trained thousands of electricians in the electrical construction industry over the past thirty years. It is presently training over 600 apprentices, all of whom complete a rigorous five year training program in which they receive both on-the-job and classroom instruction in all facets of the electrical trade.

The Orange County, San Bernardino-Riverside Counties, Ventura County, and Santa Clara County Electrical Joint Apprenticeship and Educational Training Committees are four separate training committees which also provide training for apprentices under collective bargaining agreements between N.E.C.A. Chapters and I.B.E.W. Local Unions in their areas. These Committees also are presently training hundreds of apprentice electricians, and have decades of experience in turning out competent and qualified craftsmen in the electrical industry. Like the apprentices who graduate from the Los Angeles County training program, the apprentices who train with these Committees ultimately become the competent journeymen electricians who still perform the lion's share of the more sophisticated high-rise, commercial, and industrial electrical construction work in this nation.

Amici Curiae Sheet Metal Workers' Locals 104 and 162 Joint Apprenticeship and Training Committees operate similar training programs in Northern California, including San Francisco, San Mateo, Alameda, Contra Costa, Monterey, Santa Cruz, Santa Clara, Sacramento, Sonoma and Marin counties. These joint apprenticeship committees also have a vital interest in the proper, safe and competent instruction of their apprentices in the highly-skilled sheet metal trade, and in the enforcement of their training standards on construction projects on which their apprentices are employed.

Like Petitioners Operating Engineers Trust Fund and its Joint Apprenticeship Committee, Amici Curiae herein train qualified workers in highly-skilled construction crafts in which safety and a fundamental knowledge of all aspects of the trade are of paramount importance. Accordingly, both Petitioners and Amici Curiae operate their programs under a comprehensive set of "training

standards" which specify the detailed training criteria for each apprentice in the program. Such criteria include adequate equipment and facilities for on-the-job training, instruction by skilled supervision, mobility between employers for the purposes of providing diversity of experience and breadth of training, and "supplemental" or classroom instruction of a minimum number of hours per year. As apprenticeship training programs approved by the State of California, both Petitioners and Amici Curiae adopted their training standards pursuant to a detailed set of state regulations governing the content of such standards. See Title 8, California Code of Regulations (C.C.R.) § 212, Appendix A to this Brief.

The Court of Appeal held in this proceeding that Petitioners' apprenticeship standards themselves constitute "employee welfare benefit plans" under ERISA and that a private action in state court to enforce those standards was preempted under § 514(a) of ERISA, 29 U.S.C. § 1144(a). Amici Curiae are interested in protecting the welfare of their apprentices by the enforcement of their standards, their ability to continue to require skilled, efficient, and safe training of their apprentices by contractors who sign "DAS-7" training agreements (as did Respondents), and the state's continued right to regulate apprenticeship training and enforce apprenticeship standards on state public works jobs. Amici Curiae are also vitally concerned that if decisions such as the Court of Appeal's are permitted to stand, training standards designed to further and promote the safe, efficient, and competent training of apprentices will be altogether vitiated, thereby potentially resulting in fewer training opportunities for apprentices, unsafe and hazardous construction, and resulting harm to the reputation of their industries as ones capable of providing competent and qualified craftsmen for our nation's ongoing construction

requirements. Amici Curiae are also interested in preserving the scheme of federal and state cooperation in the training of apprentices pursuant to the United States Fitzgerald Act, which has worked successfully for over fifty years.

Amici therefore have a plain and immediate interest in the outcome of these proceedings, primarily based on their right to continue to enforce their state-required and approved apprenticeship training standards as against contractors who, like Respondents, violate agreements to abide by them.

SUMMARY OF ARGUMENT

If permitted to stand, the Court of Appeal's decision would potentially eviscerate a state's right to enforce apprenticeship training standards enacted to protect the health, welfare and safety of apprentices training in its jurisdiction. Such a result is not warranted by ERISA's preemption provisions, under which Congress did not intend to preempt areas of traditional state regulation or the exercise of a state's police powers to protect the health, welfare, and safety of its citizens. Indeed, because there exist other kinds of plans covered by the definition of "employee welfare benefit plans" under ERISA which necessitate some state regulation, the Court of Appeal's ruling could set a dangerous precedent and lead to absurd and undesirable results. The Court should also grant certiorari in this proceeding because there is nothing in ERISA's legislative history which even begins to suggest a Congressional intent to intrude on a state's right to regulate apprenticeship training standards.

Additionally, the "savings clause" contained in § 514(d) of ERISA precludes a finding of preemption in these circumstances because the Court of Appeal's deci-

sion would impair the implementation of the federal Fitzgerald Act, under which the federal government has abdicated the responsibility of enforcing apprenticeship standards to the states. Practically speaking, if states are not permitted to regulate apprenticeship training without running afoul of the preemptive force of ERISA, the federal law in question will be reduced to a meaningless nullity, as the federal government has historically relied almost exclusively on the states to carry out the directives and purpose of the federal apprenticeship training law. In today's world economy, where competition abroad and economic complications at home have made the development of our own human resources all that more essential, the evisceration of our entire system for the training of qualified craftsmen should not depend on so hypertechnical and uninformed a reading of ERISA as the Court of Appeal's in the instant case.

ARGUMENT

I

UNDER THE COURT OF APPEAL'S DECISION, A STATE'S RIGHT TO ENFORCE APPRENTICESHIP STANDARDS NECESSARY TO PROTECT THE HEALTH, WELFARE AND SAFETY OF APPRENTICES COULD BE EVISCERATED.

This proceeding arises out of an attempt by Petitioners to enforce an "agreement to train apprentices" executed by Respondents under which the Respondents promised to hire and train apprentices in accordance with Petitioners' training program standards. As mentioned by Petitioners in their certiorari petition, the Respondents entered into the training agreement voluntarily and as a condition to their performing work on the San Jose Transit Mall Light Rail Project, a California state public

works job. The Court of Appeal ruled that Petitioners' attempt to enforce the training agreement through a civil action in the California state courts was preempted by ERISA.

As previously mentioned, Petitioners' standards with which Respondents agreed to abide were adopted pursuant to a detailed set of state regulations governing their content and conditions. Thus, 8 C.C.R. § 212 specifically requires that standards approved by the State Department of Industrial Relations, Division of Apprenticeship Standards (D.A.S.) contain various provisions for evaluating on-the-job training and related supplemental instruction, the ratio or number of apprentices to be employed, and the training and education of the apprentices in first aid, safe working practices, and in recognition of occupational health and safety hazards. See 8 C.C.R. § 212(a)(5), (b)(6), and (c)(12), Appendix A. These regulations are enforced by the State Division of Apprenticeship Standards pursuant to its statutory mandate to foster, promote and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment. *See* Labor Code § 3073, Appendix B. As such, Petitioners' training standards were adopted pursuant to a state's exercise of its police power to protect the health, welfare, and safety of its citizens, which is beyond ERISA's preemptive reach.

The Supreme Court has cautioned against presuming that Congress intended to preempt areas of traditional state regulation through ERISA. *Metropolitan Life Insurance Co. v. Massachusetts,* 471 U.S. 724, 740, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985). The California appellate courts have also recognized that "the historic police powers of the states are not to be superseded by the

federal act unless that was the clear and manifest purpose of Congress." *Franchise Tax Board v. Construction Laborers Vacation Trust,* 204 Cal.App.3d 955, 963 (1988). The lower federal courts have also recognized that laws of general application enacted to further areas traditionally reserved to the states, such as occupational training and public safety, are beyond the scope of ERISA preemption. *See Boise Cascade Corp. v. Peterson,* 735 F.Supp. 1434, 1439 (D. Minn. 1990) *appeal pending* No. 90-5328 MN (8th Cir.) (oral argument heard October, 1990). Indeed, the Second Circuit Court of Appeal has specifically declined to find traditional exercises of state power or regulatory authority which has some impact on ERISA benefit plans to be preempted by the federal statute. *Aetna Life Insurance Co. v. Borges,* 869 F.2d 142, 145-47 (2nd Cir. 1989), *cert. den.,* ____ U.S. ____, 107 L.Ed.2d 25 (1989); *Rebaldo v. Cuomo,* 749 F.2d 133, 138 (2nd Cir. 1984), *cert. den.,* 472 U.S. 1008, 86 L.Ed.2d 718 (1985). It cannot seriously be questioned that, as in the above-cited cases, the State of California has in this instance exercised its legislative and regulatory authority for the purpose of providing quality construction, safe training, and the prevention of exploitation of generally younger people employed in apprenticeable crafts as a measure of its traditional police power to protect the health, safety and welfare of its citizenry.

Moreover, it is well established that apprenticeship programs such as Petitioners' are not immune from all regulation by the states merely because they may constitute "employee welfare benefit plans" under ERISA. In *Lane v. Goren,* 743 F.2d 1337 (9th Cir. 1984), the court held that a state's laws prohibiting discrimination in employment are not preempted by ERISA merely because they apply to apprenticeship training funds, as such laws neither "related to" nor "purported to regulate" the

employee benefit plan. The state anti-discrimination law, codified at California Government Code § 12940(c), continues to prevent discrimination on a variety of impermissible grounds by joint apprenticeship committees such as those of Petitioners and Amici Curiae.

In addition, an application of the Court of Appeal's reasoning to other welfare benefit plans covered by ERISA could lead to disastrous and absurd results. Under § 3(1) of the Act, 29 U.S.C. § 1002(1), day care centers and housing plans fit within the same definition of "employee welfare benefit plans" that includes "apprenticeship and other training programs." Under the Court of Appeal's reasoning, future litigants might be tempted to question the right of states to regulate health and safety standards for the operation of day-care centers or housing plans because they also constitute "employee welfare benefit plans" under ERISA. Such a result would, quite clearly, be in complete contravention to the time-honored ability of states to regulate matters vital to public safety and harmful to the public weal.

Importantly, there is nothing at all in the legislative history of ERISA which even suggests that the statute's preemptive scope should reach so far, or that Congress by any means intended to intrude into the area of traditional state regulation of either day care, housing, or apprenticeship training. Indeed, a review of the legislative history reveals that Congress' paramount purpose in enacting ERISA was to "provide for uniform source of law in the areas of vesting, funding, insurance, and portability standards, for evaluating fiduciary conduct, and for creating a single reporting and disclosure system in lieu of burdensome multiple reports," not to strip states of their right to enforce laws designed for the general health and safety of their citizenry. See 1974 U.S. Code Congressional and

Administrative News, 4639, 4655, 4838, 4871, cited in *Boise Cascade Corp. v. Peterson, supra,* 735 F.Supp. at 1441.

The context in which the state's interest in the training of apprentices is sought to be enforced herein is also highly significant. Just as Congress enacted the federal Davis-Bacon Act, 40 U.S.C. § 276a, to provide for payment of prevailing wages and the employment of qualified craftsmen on federal public works, the State of California has sought to ensure the necessary training of skilled journeyman craftspeople on state public works through the auspices of California Labor Code § 1777.5. The regulation of apprenticeship training on government-sponsored projects thus constitutes merely another example of a state's exercise of its traditional police power to further and protect the health, welfare, safety, and prosperity of its citizenry, and interferes with no Congressionally-directed scheme.

Finally, to the extent that the Ninth Circuit Court of Appeals' decision in *Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Committee,* 891 F.2d 719 (9th Cir. 1989), *cert. den.*, ____ U.S. ____, 111 S.Ct. 72 (1990) supports a contrary conclusion, that decision is distinguishable from the instant case and was in any event wrongly decided. As Petitioners point out, the employer there did not voluntarily execute an agreement to train apprentices as did Respondents, and was therefore not subject to the type of state court action to enforce such an agreement which Petitioners presently seek to assert. Quite simply, not even *Hydrostorage* stands for the proposition that contractors who sign DAS-7 training agreements do not have to comply with them by hiring and training apprentices on public works jobs in accordance with training standards mandated by

the state and adopted by apprenticeship training committees for the purpose of ensuring safe and proper training. Moreover, the Ninth Circuit's rote and simplistic analysis of the ERISA preemption doctrine, upon which the state Court of Appeal blindly relied, cannot be countenanced in view of the Ninth Circuit's failure to even consider the status of apprenticeship training standards as exercises of a state's traditional police powers and the detrimental impact on the entire system of apprenticeship training that would result from its holding.

Petitioners' attempt to enforce its apprenticeship standards through a private state court action is therefore not preempted by ERISA, and a writ of certiorari should be directed to the California Court of Appeal to redress the appellate court's erroneous decision.

II

THE COURT OF APPEAL'S DECISION IMPAIRS THE IMPLEMENTATION OF THE FEDERAL FITZGERALD ACT, UNDER WHICH THE FEDERAL GOVERNMENT HAS ABDICATED ITS RESPONSIBILITY FOR THE ENFORCEMENT OF APPRENTICESHIP STANDARDS TO THE STATES.

ERISA preemption of the enforcement of Petitioners' apprenticeship standards is also foreclosed by the "savings clause" of ERISA, 29 U.S.C. § 1144(d), which provides that

> Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States ... or any rule or regulation issued under any such law.

This provision has been employed in a wide variety of circumstances in which the courts have refused to find

state laws preempted when they were useful or necessary for enforcing another federal statute. Preemption of Petitioners' rights to enforce their apprenticeship standards in these circumstances would impair the operation of the United States Fitzgerald Act, 29 U.S.C. § 50, which itself preempts the field of apprenticeship training. *Associated Builders and Contractors, Inc. v. McDonald,* 731 F.Supp. 966, 969 (D. Nev. 1989).

The Fitzgerald Act was enacted in 1937 to promote the furtherance of labor standards necessary to safeguard the welfare of apprentices training in this country. 29 U.S.C. § 50. Only two years later, the California Legislature enacted the Shelly-Maloney Apprentice Labor Standards Act of 1939 for the identical purpose. The Shelly-Maloney Act, through the creation of the above-mentioned Division of Apprenticeship Standards and the California Apprenticeship Council, has served as the vehicle by which the federal purpose of promoting and protecting the welfare of the apprentices and of ensuring their safe and efficient training has been achieved in this state.

Over the years, the Division of Apprenticeship Standards and the Department of Labor, through its Bureau of Apprenticeship Training, have entered into "cooperative working agreements" for the purpose of carrying out the ultimate purpose of the Fitzgerald Act and its implementing regulations. These agreements have specifically provided that the federal B.A.T. and the state D.A.S. share responsibility to work "as complementary units to promote, develop, and maintain both apprenticeship and other on-the-job training systems," and that "all new registered apprenticeship programs shall be consistent with the provisions of state law and regulation." By means of agreements similar to this one, the federal government has thus historically abdicated its responsi-

bility for the enforcement of apprenticeship training standards to the states, which have in turn implemented the legislative and regulatory schemes necessary to protect and advance the welfare of apprentices training in their jurisdictions under laws such as the Shelly-Maloney Act.

The Court of Appeal's decision threatens this long-standing system of apprenticeship training by calling into question a state's right to regulate any standards for apprenticeship training, or an apprenticeship program's right to enforce such standards, merely because such programs purportedly constitute "employee welfare benefit plans" under ERISA. Indeed, the entire purpose and function of the Fitzgerald Act, to further and advance the training of apprentices in state-approved training programs, would be vitiated if, as the Court of Appeal held, any attempts to enforce apprenticeship training standards run afoul of the ERISA preemption doctrine. This is a result which would undoubtedly do serious harm to the present system of apprenticeship training, its usefulness to our nation's development of its potential human resources, and our competitive place in the world's economy.

Interestingly, a judge of the superior court of the State of California has already reviewed the potential impact that ERISA preemption of California's regulatory laws governing apprenticeship training standards would have on the implementation of the Fitzgerald Act:

> These regulations [8 California Code of Regulations Sections 208, 212, 212.2] are the embodiment of the standards to safeguard the welfare of apprentices which the Fitzgerald Act requires the Secretary of Labor to formulate and to extend the application of by cooperation with appropriate State agencies. 29 U.S.C. section 50. Preemption of these provisions

> would not only impair, but would wholly undermine, the Fitzgerald Act and the federal regulations issued under the Act to implement its objectives. See 29 C.F.R. sections 29.1, 29.5, 29.12. As in *Shaw v. Delta Airlines* (1983), 463 U.S. 85, 102, preemption of these provisions "would frustrate the goal of encouraging joint state/federal enforcement" of the federal statutory scheme. Indeed, in *Hydrostorage* itself, the District Court recognized that "federal policy favors 'the formulation of programs of apprenticeship' " and cautioned that its holding should not be taken "as denigrating the desirability of apprenticeship programs, invalidating the State's policy to promote such programs, or *denying state authority to regulate the conditions of employment of apprentices*" (685 F.Supp. at 723) (Emphasis supplied).

Judgment of the Superior Court dated April 18, 1989, Stuart R. Pollak, Judge, in *Associated Builders and Contractors J.A.C. v. State of California,* San Francisco Superior Court Case No. 900162.

Importantly, the courts have traditionally upheld state statutes enacted pursuant to federal law even though such statutes "relate to" ERISA plans. For example, in *Shaw v. Delta Airlines, Inc.,* 463 U.S. 85, 103 S.Ct. 2890, 2902-03, 77 L.Ed.2d 490 (1983), the Supreme Court used § 514(d) of ERISA to find that a New York statute which regulated the benefits available to pregnant employees was not preempted by ERISA because the state statute was useful in enforcing another federal statute, namely Title VII of the Civil Rights Act of 1964. The Court found that given the importance of state fair employment laws to Title VII's enforcement scheme, preemption would frustrate the goals of Title VII and would, in the words of § 514(d), "modify" and "impair" federal law. Here, pre-

emption of a joint apprenticeship committee's right to enforce apprenticeship standards adopted pursuant to state law would also modify and impair the Fitzgerald Act's ultimate goal of enforcing apprenticeship training standards, and would thus also run afoul of § 514(d).

The Supreme Court in *Shaw* did not specifically hold that a state law must be an "enforcement mechanism" of a federal law in all cases in order to be saved from preemption by § 514(d), as the Ninth Circuit in *Hydrostorage* and the Court of Appeal in this proceeding apparently believed. Rather, the Supreme Court in *Shaw* merely analyzed a state law in the context of the purposes for which it was enacted, and found that the state law was useful to the enforcement of the federal scheme. *See Shaw, supra,* 463 U.S. at 102. However, even if a state law is required to be an "enforcement mechanism" of the federal statute, Petitioners' instant state court action clearly meets that test. Indeed, there can be no more effective way of enforcing the Fitzgerald Act's purpose of protecting and advancing the welfare of apprentices than by an action requiring an employer to hire and train apprentices under standards approved by the "recognized state agency" under the federal regulations for training purposes.

The courts have long recognized the need to accommodate the policies and goals of ERISA with those of other federal laws when, as here, the provisions of separate federal statutes appear to conflict. See *Pension Benefit Guarantee Corp. v. LTV Corp.,* 875 F.2d 1008, 1016 (2nd Cir. 1989) (holding that the goals of ERISA must be accommodated with those of bankruptcy and labor law); *In Re Vickers,* 12 Employee Benefit Cases (BNA) 2236, 2241 (W.D. Mo. 1990) (harmonizing specified exemptions of interest in pension plans contained in the Bankruptcy

Code with ERISA); *In Re Matter of Goff,* 706 F.2d 574, 786-7 (5th Cir. 1983) (finding that ERISA's specific provision precluding interference with the operation of federal law rendered the Bankruptcy Code effective over any ERISA provisions to the contrary). In fact, federal courts faced with clear conflicts between ERISA's preemptive provisions and the necessary implementation of other federal laws have not hesitated to find those laws "saved" by § 514(d). See *Beard v. Carrollton R.R.,* 893 F.2d 117, 123 (6th Cir. 1989) (claims arguably covered by ERISA held subject to the primary and exclusive jurisdiction of the National Railroad Adjustment Board); *Connors v. Amax Coal Co., Inc.,* 858 F.2d 1226, 1231 (7th Cir. 1988) (finding that ERISA did not preempt application of administrative procedures for the recovery of black lung-related medical expenses under the Longshore and Harbor Workers' Compensation Act); *Calhoun v. F.D.I.C.,* 653 F.Supp. 1288, 1293 (N.D. Tex. 1987) (holding that the F.D.I.C., pursuant to its regulatory provisions, had the power to withhold payment of pension plan benefits along with other types of insured deposits without running afoul of the preemption provisions of ERISA).

Lastly, it is necessary to recall that ERISA was enacted in 1974, thirty-seven years after passage of the Fitzgerald Act, and thirty-five years after the State of California began regulating apprenticeship training in this state. The Fitzgerald Act is therefore clearly the kind of statute that was firmly in place at the time of ERISA's enactment and which ERISA, by operation of its savings clause, took pains not to displace. *See I.A.M. National Pension Fund, et al. v. Slyman Industries,* 704 F.Supp. 301, 302 (D. D.C. 1989). Indeed, it is beyond belief that Congress even considered displacing the federally-established system for the supervision of apprenticeship train-

ing in view of its expressly stated intent that cooperative arrangements between state and federal agencies continue when necessary to the enforcement of other federal laws. See Legislative History of the Employee Retirement Income Security Act of 1974, Public Law 93-406, Prepared by the Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate, April 1976, Volume II, p. 2364, Vol. III, p. 4671.

The Fitzgerald Act's essential objective of furthering the training of apprentices under acceptable standards in state-approved training programs would therefor be seriously impaired if the Court of Appeal's decision is permitted to stand.

CONCLUSION

Based on the foregoing, together with the arguments advanced in the Petition for Writ of Certiorari, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeal.

Respectfully submitted,

RONALD W. NOVOTNY
HILL, FARRER & BURRILL

KATHRYN A. SURE
WYLIE, MCBRIDE, JESINGER,
SURE & PLATTEN
Attorneys for Amici Curiae

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APPENDIX A

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Title 8 § 212. Content of Apprenticeship Program Standards

Apprenticeship programs shall be established by written standards approved by the Chief DAS. The standards shall be approved only when they cover all work performed within the apprenticeable occupation, conform to applicable law, and contain:

(a) Evidence of:

(1) work site facilities and equipment sufficient to train the apprentice(s);

(2) skilled workers as trainers at the work site(s);

(3) adequate arrangements for related and supplemental instruction pursuant to Labor Code Section 3074;

(4) ability to offer training and supervision in all work processes of the apprenticeable occupation(s);

(5) provisions for evaluation of on-the-job training and related supplemental instruction;

(b) A statement of the:

(1) occupation(s);

(2) party or parties to whom the standards apply and the geographic area;

(3) definition and duties of the apprentice;

(4) working conditions of the apprentice;

(5) current applicable journeyman wage or wages;

(6) ratio or number of apprentices to be employed and the method of determining such ratio;

(7) mechanism that will be used to provide apprentices with reasonably continuous employment in the event of a layoff or the inability of an employer to provide training in all work processes as outlined in the standards;

(8) requirement for incorporating the provisions of the standards into the apprentice agreement.

(c) Provisions for:

(1) establishment of an apprenticeship committee if applicable;

(2) administration of the standards;

(3) establishment of rules and regulations governing the program;

(4) determining the qualifications of employers if other than single employer programs;

(5) determining the qualifications of apprentice applicants;

(6) an apprentice worksite job progress and related and supplemental instruction record system;

(7) graduated minimum wage schedules to be paid during the term of training, and applied uniformly to all employers subject to the standards, as applicable:

(A) wage progression schedule shall be in accordance with the collective bargaining agreement, if contained therein;

(B) where the program is not subject to collective bargaining, the wage progression schedule shall be determined by the program sponsor in consultation with the Division of Apprenticeship Standards and shall in no case be less than ten percent (10%) per year, when the entry

wage is based on fifty percent (50%) of the current journeyman wage.

(8) discipline of apprentices and including provisions for fair hearings;

(9) termination or recommendation of cancellation of apprentice agreements;

(10) recommending issuance of State Certificates of Completion of Apprenticeship pursuant to Section 224 of this Chapter;

(11) revision of standards;

(12) training and education of the apprentice in first aid, safe working practices and in the recognition of occupational health and safety hazards;

(13) fair and impartial treatment of applicants for apprenticeship, selected through uniform selection procedures, which shall be an addendum to the standards, pursuant to Section 215 of this Chapter;

(14) mobility between employers when essential to provide exposure and training in various work processes in the apprenticeable occupation;

(15) approval of the standards by the Chief DAS.

(d) The names and signatures of the parties.

APPENDIX B

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Labor Code § 3073. Administration of chapter

The Chief of the Division of Apprenticeship Standards, or his or her duly authorized representative, shall administer the provisions of this chapter; act as secretary of the California Apprenticeship Council; shall foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment; shall ensure that selection procedures are impartially administered to all applicants for apprenticeship; shall gather and promptly disseminate information through apprenticeship and training information centers; shall maintain on public file in all high schools and field offices of the Employment Development Department the name and location of the local area apprenticeship committees, the filing date, and minimum requirements for application of all registered apprenticeship programs; shall cooperate in the development of apprenticeship programs and may advise with them on problems affecting apprenticeship standards; shall audit all selection and disciplinary proceedings of apprentices or prospective apprentices; may enter joint agreements with the Employment Development Department outreach education and employment programs, and educational institutions on the operation of apprenticeship information centers, including positive efforts to achieve information on equal opportunity and affirmative action programs for women and minorities; and shall supervise and recommend apprenticeship agreements as to these standards and perform such other duties associated therewith as the California Apprenticeship Council may recommend. The chief shall coordinate the exchange, by the California Apprenticeship Council, the apprenticeship program sponsors, the Fair Employ-

ment and Housing Commission, community organizations, and other interested persons, of information on available minorities and women who may serve as apprentices.